

Message Text

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TO AMEMBASSY MANILA

C O N F I D E N T I A L STATE 196488

E.O. 11652: GDS

TAGS: ACLM

SUBJECT: IMPLADER OF GOP IN NEGRITO TRIBES CASE

REF: (A) MANILLA 13695 77, (B) MANILLA 11467 77, (C) STATE
178442 77

1. THE DEPARTMENT OF JUSTICE HAS WRITTEN THE ASST. LEGAL
ADVISER FOR EAST ASIAN AND PACIFIC AFFAIRS REQUESTING THE
DEPARTMENT'S OPINION ON WHETHER TO ISSUE A THIRD PARTY
COMPLAINT AGAINST THE GOP IN THE TWO NEGRITO TRIBES CASES.

2. THE TEXT OF THE LETTER FOLLOWS:

QUOTE. THESE TWO CASES WERE INSTITUTED IN THE COURTS
OF THE PHILIPPINES BY ONE ABRAHAM ESTRADA IN HIS INDIVIDUAL
AND PERSONAL CAPACITY, AND AS "OVERALL CHIEF OF THE THREE
NEGRITO TRIBES OF KALAYAAN, BOTON AND BINICTICAN." CASE
NO. 2197-0 IS BROUGHT SOLELY AGAINST THE UNITED STATES;
CASE NO. 2198-0 IS BROUGHT AGAINST REAR ADMIRAL THOMAS
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KILCLINE AND CAPTAIN DONALD CONNER, U.S.N.

EACH OF THESE CASES INVOLVES BASICALLY TWO CLAIMS, ONE
FOR ALLEGED BREACH OF A CONTRACT GIVING THE TRIBES THE
RIGHT TO GATHER AND SELL SCRAPS AND SALVAGEABLE MATERIALS
FROM SUBIC BAY NAVAL BASE, THE OTHER FOR DAMAGES RESULTING

FROM ALLEGED EXPROPRIATION OF ANCESTRAL HOMES AND LANDS
WITHOUT JUST COMPENSATION.

THE DEFENSE OF THE BREACH OF CONTRACT CLAIM PRESENTS
NO DIFFICULTY FOR US SINCE THERE IS NO EVIDENCE OF THE
EXISTENCE OF A CONTRACT. AT MOST, IT APPEARS THAT THE
TRIBES WERE GRANTED A REVOCABLE LICENSE TO GATHER SCRAP,
SUBJECT TO TERMINATION AT WILL BY SUBIC BAY NAVAL AUTHOR-
ITIES.

WE ARE, HOWEVER, CONCERNED WITH THE CLAIM FOR THE
ALLEGED EXPROPRIATION OF ANCESTRAL LANDS WITHOUT JUST COM-
PENSATION. THE PHILIPPINE GOVERNMENT HAS GRANTED TO THE
UNITED STATES THE RIGHT TO FULL USE OF BASES IN THE PHILIP-
PINES; THE PHILIPPINE GOVERNMENT IS, IN EFFECT, THE GUARAN-
TOR OF THE TITLE TO THIS PROPERTY. FOR THIS REASON, OUR
PHILIPPINE ATTORNEY SUBMITTED A MOTION ON DECEMBER 1, 1977
IN BOTH CASES REQUESTING THE COURT TO ISSUE AN ORDER RE-
QUIRING THE PHILIPPINE GOVERNMENT TO INTERVENE IN THESE
CASES. IN AN ORDER OF APRIL 26, 1978, THE COURT DENIED
THIS MOTION, DEFERRED A RULING ON AN ACCOMPANYING MOTION
THAT THE CASES BE DISMISSED, AND REQUIRED ANSWERS TO THE
COMPLAINTS.

OUR ANSWERS HAVE NOW BEEN FILED AND WE ARE NOW RAPIDLY
APPROACHING THE PRE-TRIAL CONFERENCE STAGE IN THESE CASES.
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IF WE ARE TO FILE A THIRD PARTY COMPLAINT AGAINST THE
PHILIPPINE GOVERNMENT TO INVOLVE THEM IN THESE CASES, WE
MUST DO SO PRIOR TO THE COMPLETION OF THE PRE-TRIAL CON-
FERENCE. HOWEVER, BEFORE WE INSTRUCT OUR ATTORNEY TO TAKE
THIS STEP, WE WOULD APPRECIATE RECEIVING YOUR DEPARTMENT'S
VIEWS ON THE MATTER.

SHOULD YOU NOT FAVOR OUR IMPEADING THE PHILIPPINE
GOVERNMENT IN THESE ACTIONS, PLEASE ADVISE US WHETHER YOUR
DEPARTMENT IS PREPARED TO TAKE THIS MATTER UP WITH THE
PHILIPPINE GOVERNMENT THROUGH DIPLOMATIC CHANNELS, SO AS TO
PROTECT THE INTERESTS OF THE UNITED STATES IN THESE CASES.
END QUOTE.

3. DEPT. SEEKS EMBASSY'S REACTION PRIOR TO AUTHORIZING
ISSUANCE OF THIRD PARTY COMPLAINT. VANCE

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